

To: Kristi Jones
From: Jeremy Tarr
RE: Government Costs of Pipeline Protests
Date: December 4, 2017

This brief includes information on the cost to state and local governments for responding to large protests. The significant costs to North Dakota for the Dakota Access pipeline protests are well documented in the media. I could not find media articles with cost totals for pipeline protests in other states, but I can keep looking (or contact states directly or engage the NGA) if needed. For comparison, this brief includes cost estimates for protests in Ferguson and Charlotte in response to police shootings in those cities.

Dakota Access pipeline

By September 2017, the North Dakota Emergency Commission had borrowed \$43 million to cover the cost of policing protests related to the Dakota Access pipeline. Costs will be defrayed by a \$10 million federal grant and a \$15 million donation from Dakota Access LLC, the pipeline developer. Expenses include the costs of law enforcement personnel from North Dakota and 11 other states that joined North Dakota in managing the swell of protesters. Police arrested about 750 protesters between August 2016 and February 2017.

- <http://www.kfyrvtv.com/content/news/Energy-Transfer-Partners-donates-15-million-to-help-reimburse-DAPL-protest-costs-448568583.html>
- <https://www.mprnews.org/story/2017/09/25/north-dakota-bill-rises-for-oil-pipeline-protest-costs>
- <http://www.denverpost.com/2017/03/16/dakota-access-oil-pipeline-protests-cost/>

Ferguson Protests

Protests in response to the killing of Michael Brown in 2014 cost Missouri taxpayers approximately \$5.7 million. This figure includes \$1.1 million for the state highway patrol, \$384,000 for the National Guard, and \$4.2 million for St. Louis County expenses to cover police overtime, damaged police vehicles, and supplies for first responders. These figures do not include the cost of property damage.

<https://www.washingtontimes.com/news/2014/oct/20/ferguson-unrest-costs-taxpayers-57m-and-counting-r/>

Charlotte Protests

Charlotte protests in response to the 2016 killing of Keith Lamont Scott cost the city \$4.6 million. Protests lasted approximately 3 weeks. The city does not anticipate reimbursement from the state or federal government. <http://www.charlotteobserver.com/news/politics-government/article109699922.html>

Civil Disobedience Restitution Payments

Some states have laws or are exploring laws that require protestors to pay damages to the pipeline company or cover law enforcement personnel costs. Protesters in Michigan, for example, were hit with a \$40,000 restitution bill for blocking access to a pipeline road. When Pennsylvania law enforcement incurred costs from Dakota Access pipeline protests, state lawmakers introduced a bill to require unlawful protesters to pay restitution for public costs in response to their actions. Some civil rights advocates claim such restitution laws chill protests.

- http://www.abajournal.com/magazine/article/protesters_may_pay_the_price_when_civil_disobedience_becomes_costly
- http://www.abajournal.com/magazine/article/protesters_may_pay_the_price_when_civil_disobedience_becomes_costly
- <http://www.ifpo.org/news/new-pennsylvania-bill-force-protesters-pay-security-costs/>

To: Ken Eudy
From: Jeremy Tarr
Date: December 22, 2017
Re: State / Local Incentives

In a prior discussion, you asked whether there is precedent for a company setting aside funds for community benefit before approval of a major deal or project. I found an illustrative case where utilities funded a customer investment fund for ratepayer benefits in order to win state approval of a merger. There is also precedent for a pipeline company paying more than the fair market value for an easement over public lands, with the overage directed to purposes desired by the state. The ACP route does not cross any NC state parks, but if helpful, I can look into whether it crosses any other type of public land, such as property owned by local governments or the state in some other capacity.

Exelon-Pepco Merger

In March 2016 Exelon and Pepco completed a \$6.8 billion merger. To get approval from public service commissions, the companies agreed that Exelon will provide direct benefits to customers and communities worth more than \$430 million. Washington, D.C. will receive \$72 million in a customer investment fund to be used for rate relief, energy conservation programs, and grid modernization. The terms of the merger and customer investment fund were highly contentious, and the companies' level of financial commitment to the fund increased through the negotiations.

<http://www.exeloncorp.com/newsroom/merger-close>

<https://www.rtoinsider.com/dc-psc-oks-exelon-pepco-merger-24090/>

Easement Payments for Pipeline Over Public Land

Tennessee Gas Pipeline Co. will pay Massachusetts \$640,000 for land taken by eminent domain in the Otis State Forest to construct the Connecticut Expansion. The land's fair market value is \$40,000. \$300,000 would go to acquisition of additional conservation land, and \$300,000 would go toward improvements in the state forest. The Connecticut Expansion is a \$93 million project greenlighted in December 2016.

http://www.masslive.com/news/index.ssf/2016/12/tennessee_gas_pipeline_agrees.html

<http://wamc.org/post/massachusetts-announces-settlement-over-pipeline-expansion-otis-st-forest>

In October 2017 the Virginia Outdoors Foundation approved easements for the ACP and Mountain Valley Pipeline to run through five Virginia counties. As part of that approval, the Foundation required ACP to provide more than 1,100 acres of conservation land as well as \$4 million for the long-term care of that land.

<http://www.virginiaoutdoorsfoundation.org/2017/10/vof-trustees-approve-acp-mvp-conversion-applications-oct-16-public-meeting/>

June Blotnick, Clean Air Carolina, 1/26 left vmail

Hope Taylor, Clean Water for NC, 1/26 left vmail

Marvin Winstead, Nash County, talked 1/26. Flattered for call. Compliment to call. Disagree w Governor. Farm land never the same.

Therese Vick, Blue Ridge Env'tl Defense League, 1/26

- DEQ no capacity to enforce ACP
- Lots EJ abuse b/c of pipeline
- Very disappointed in Gov Cooper
- Want gov to face the people

Kay Reibold,

- Emotional. Expected more.

Jamie Cole, NCCN

- EJ opportunities re fund
- Role for EJ going forward with
- Help watch compliance w permit requirements
- Leads ACP EJ call on Mondays
- Engage communities each step of the way

Belinda Joiner, 252-673-6085

Naeema Muhammed, 252-314-0703

Timeline for State Action Regarding the ACP

For the ACP to proceed, it must receive authorizations from the federal government and a variety of state permits. North Carolina had opportunities to weigh-in at the federal level and will need to make permit determinations this fall.

Federal

State Permits and Authorizations

Water Quality

The ACP needs a 401 Certification and a Riparian Buffer authorization from NC DEQ. The 401 Certification certifies to the federal agency (FERC in this case) that the project can be completed and remain in compliance with state water quality standards. The Riparian Buffer authorization addresses potential impacts to streamside buffers and often requires mitigation payment if on-site mitigation is not feasible. DEQ is scheduled to issued its 401/Buffer decision by September 18, 2017. DEQ, however plans to seek additional information from the ACP applicants in light of public comments, which will postpone the decision until early November. The precise deadline is 60 days from the date DEQ received the additional information from the applicant.

- Will request additional info.
-

Land Resources

The ACP needs a DEQ-approved **erosion and sedimentation control plan** to prevent grading and other land-disturbing activities from polluting NC waters with sediment. DEQ has 30 days to approve or deny the plan after receipt. If the plan is denied, the applicant can revise the plan and resubmit it to DEQ.

It is a state permit, but an approval also triggers issuance of a construction stormwater general permit under NC's approved program to implement the Clean Water Act so may have some connections to federal law.

- Received by DEQ Aug 28. 30 days to act.
- DEQ act by 9/27.
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Air Quality

The proposed compressor station in Northampton County would need a minor stationary source construction and operation permit. Public notice and hearing are not required, but DEQ decided provide this given the level of public interest.

What's the DEQ deadline?

DEQ doing a public hearing?

Natural Heritage/Protected Species Consultation (DNCR)

- DNCR required to hire archeologist for project.
- Federal recognized tribes have better protections than states.

- DNCR: call Ramona Bartos, Director of Div of Historical Resources, 807-6583.

Consultation under Section 106 of the National Historic Preservation Act (DNCR)

Protected Species Consultation (Wildlife Resources Commission)

review by Emergency Management in DPS as part of the FERC process.??

Air Quality

Minor Stationary Source Construction and Operation Permit

Applied September 17, 2015, but additional information requested; pending response.

Air Quality's only involvement is related to the proposed compressor station in NorthHampton County. We have a draft permit completed. The draft air-quality permit is a minor source permit...it is not a major source (a.k.a. Title V) and therefore a public notice and hearing is not required. However the director has the ability to schedule public comment period and public hearing if there's substantive public interest. We scheduled a briefing for senior leadership including Sec Regan, John, Sheila, Mary Penny and Sarah Rice on August 28 to decide whether to hold a public hearing on the draft air quality permit.

I've also attached a permit listing that covers the above DEQ permits and a few others (well permits, etc.) that may be a part of this project as it progresses.

There is a lot more in-depth info if you need it at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/acp>

Compressor station

- Air quality permit (what type?)
- DAQ decided to do a hearing/comment period for the permit.
- 30 days notice. Hearing. Oct 12. 30 day comment period.
- When does DEQ decide?
- 707-8726: William Willets. Permitting section chief.

Pipeline

- No air quality permit for pipeline.

Stormwater

State storm water permit. (Nash County)

- Nash County: NPDES program.
- Cumberland: NPDES program

- Anyone can petition for individual rather than general permits and public comment period.
- Deadline unknown yet. DEQ has not received application yet.

State storm water permit for construction of linear utility line project.

- General permit.
- Anyone can petition for individual rather than general permits and public comment period.

Groups and individuals continue to meet with the Governor's Policy Office and/or submit letters to the Governor expressing their views on the proposed Atlantic Coast Pipeline (ACP). On balance, we are receiving many more contacts from opponents than proponents.

DEQ expects to issue a determination on a key water quality permit around the beginning of November (nonpublic timeline). Given this timing and the attention around the pipeline, it is worth considering stakeholder meetings with the Governor by the end of September, such as a meeting with a handful of community activists.

Pipeline Proponents

Only a few groups have expressed support to the Policy Office for the ACP (e.g., Farm Bureau, NCEast Alliance, and Northampton County manager). They favor the pipeline for the following reasons:

- Lower tax burden for homeowners because of increased tax base
- Creation of ACP construction jobs
- Natural gas availability will attract industry
- Distributed natural gas to farms and residences would allow owners to switch from high-cost propane

Pipeline Opponents

Opponents to the ACP think the ACP is unnecessary, would result in negative economic and environmental impacts, and would have disproportionate negative effects on people of color and low-income residents. I have attached a letter signed by 13 organizations that succinctly conveys their arguments and sentiments regarding the ACP. Opponents include Sierra Club, NC WARN, NAACP, SELC, Clean Water for North Carolina, and many community groups from impacted counties.

In general, ACP opponents raise the following specific concerns:

Insufficient Demand—Duke Energy and Dominion have not demonstrated sufficient future natural gas demand to warrant a natural gas pipeline, especially one this large. Electricity BAU demand projections are flat, and demand will decline with additional energy efficiency programs. They argue FERC's assessment of need is based upon whether there are contracts for future gas supplies, not an overall analysis of projected energy needs.

Higher Electricity Costs—Overbuilding pipeline capacity will result in higher electricity rates to pay off the unnecessary ACP.

Undermine Clean Energy—Constructing natural gas pipeline with excess capacity tips the scales in favor of new natural gas plants compared to new renewable energy projects. Once natural gas capacity is built, there will be an inclination to build new gas-fired power plants to use the available capacity, rather than pursue new solar or wind projects.

Duke Energy ROI—Building and overbuilding natural gas pipeline capacity is in Duke Energy's interest because it gets ROI on capital projects.

Air Emissions / Climate Change—The pipeline and compressor station will leak methane and VOCs, which harm public health and accelerate climate change. In addition, locking in this natural gas supply will put a thumb on the scale for new fossil power plants, further contributing to climate change.

Water Quality / Wetlands—The ACP could lead to leaking liquids (blasting chemicals, fuels, and natural gas liquids) during and after construction. Leaks can harm well water, water bodies, and wetlands. The ACP route also crosses sensitive waterways. Further, its construction risks sedimentation and erosion into rivers and wetlands.

Environmental Justice—The ACP imposes health, environmental, and economic risk on vulnerable populations with a history being subjected to such risks. Seven of the eight counties on the pipeline's path have a higher percentage of people of color than the state average. A disproportionate number of North Carolina's Native American populations live along the ACP route.

No/Minimal Economic Benefit—The ACP will create few long-term jobs, and construction jobs will not necessarily be filled by locals. Further, the transmission pipeline will not provide for affordable natural gas distribution to residents and businesses.

Noise Pollution—The compressor station in Northampton County will create constant noise pollution for neighboring residents.

Public Safety—In 7 counties along the NC route, there are 24 High Consequence Areas—areas with at least 20 buildings or particularly vulnerable populations (e.g., daycare centers and retirement homes) within a hazardous distance from the pipeline. Also, recent pipeline explosions indicate that the blast zone—distance at which there is a reasonable risk of injury or death—should extend 43% further from the pipeline than Dominion assumed, meaning more communities are at risk than previously identified.

Property Rights—Property owners object to the use of eminent domain in order to support the construction of an unnecessary pipeline.

The following groups and individuals have contacted the Governor's Office about the ACP:

Organization	Individual	Notes
Support ACP		
Farm Bureau	Jake Parker (Gov. Affairs)	
Northampton County	Kimberly Turner (County Manager)	
NCEast Alliance	John Chaffee (President, CEO)	
Oppose ACP		
Sierra Club	Molly Diggins (State Director), Cassie Gavin (Gov. Affairs)	
NC WARN	Jim Warren (Executive Director) John Runkle (Attorney)	Against fracking, the transport of fracked gas, and power generation from fracked gas
NAACP	Rev. Barber	Partner with NC WARN opposing fracking, natural gas pipeline, and natural gas power plants in NC
SELC	Brooks Rainey-Pearson (Gov. Affairs)	
Alliance to Protect Our People and Places We Live (APPPL)	Kay Reibold (Policy Advocate)	Repeated interactions with Gov. Office emphasizing their work with Nash County residents
--	Cyna Woodard (ASU student)	
Clean Water for North Carolina	Hope Taylor (Executive Director), Ericka Faircloth (Justice Organizer, Lumbee Tribe member)	
Blue Ridge Environmental Defense League	Therese Vick (Organizer)	
NC Environmental Justice Network	Naeema Muhammed (Organizing Director)	
Concerned Citizens of Northampton County	Belinda Joyner (President)	
Rachel Carson Council	Bob Musil (President & CEO)	
Frack-free NC Alliance	Hope Taylor	19 anti-ACP orgs, including Appalachian Voices, Nash Stop the Pipeline, Clean Air Carolina, and various riverkeeper groups

Atlantic Cost Pipeline

Questions

- Is there a real need? Will NC demand support it?
- What is NCUC's role? It determines whether to pass costs onto ratepayers, right? Does it do a CPCN?
 - NCUC hasn't conducted an analysis of need for increased NG supply.

Status

- FERC DEIS comments due 4/6/2017
 - DEQ submitted comments
 - Re-evaluate EJ report using additional criteria.
 - EJ report should consider impacts on state-recognizes tribes
 - Address secondary and cumulative impacts
 - Does DEIS address methane emissions or leaks?
- FERC releases final EIS.
- FERC decides on applications.
 - is there a comment period regarding need of the project?
- DEQ will receive state permit applications before the FERC's final EIS or FERC decision.
- Parties want to begin construction fall 2017. Service begin Q1 2019.

Background

In September 2015, parties applied to the FERC for two projects:

- ACP, Inc. and Dominion Transmission int'l seek FERC permission to build and operate NG pipeline in PA, WV, Va, and NC. Duke, SoCo, and Dominion own the ACP.
- Atlantic and Piedmont seek FERC permission to lease capacity on Piedmont's existing pipeline distribution system (Capacity Lease Proposal)

FERC is leading the NEPA process, hence the EIS process through NEPA. Federal agencies involved include USACE, EPA, USDA, Forest Service, FWS, NWR, and WVDNR.

ACP

- Deliver 1.5 billion cubic f/d to NG customers in VA and NC.
- Needed for growing energy needs of utilities and LDCs in VA and NC. Majority of NG for EGUs, less for residential, industrial, and commercial uses.

Supply Header Project

- Construct pipeline, modify 4 compressor stations, etc.
- Allows DTL to transport NG of 1.5 Bcf/d to customers including Atlantic.

Capacity Leasing Proposal

- Allows Atlantic access to additional capacity on the Piedmont system (different than ACP?).
- Avoids need for new construction; avoids overbuilding.

Arguments For

- Need expanded capacity to meet growing demand
- Coupled with NG distribution to farms, will reduce their energy costs dramatically (propane expensive)

Arguments Against

- Not needed to supply electricity
 - Dukes 2016 IRP says additional gas pipeline not needed until 2034. Projected electricity demand doesn't support the pipeline. – sierra club
 - Encouragement to require updated demand assumptions before approving ACP (NC and FERC)
 - Need is based upon precedent agreements—ACP is owned by, for example, Duke Energy yet cites Duke subsidiaries as saying there is need. Should do independent market analysis of need.
- Will increase electricity rates to pay for pipeline
- Should spend investment in RE rather than more NG
- Disproportionately affects African American and tribal communities. First two routes through Durham and Raleigh rejected
- Many adverse environmental impacts: streams....
 - Certain segments don't need EIS b/c not before FERC
- Reduces property value
- Long-term easement in middle of farm land. Constrains property use.
- Negatively affects farm land fertility and productivity
- Bad cumulative impacts

Commented [TJM1]: SELC says need is part of EIS analysis.

SELC says EIA does not project increased demand for NG. Where?

Questions

- What are pro arguments?
- Is it really needed?
 - Synapse says no, but NG scenarios based upon CPP compliance
- Just for electricity or also home gas?
- What's the overall process?
 - What state permits?
 - What federal actions?
 - FERC...

Following up on the request to know the dates of state deadlines regarding the ACP. The short version is that for the ACP to proceed, it must receive authorizations from the federal government and a variety of state permits.

The primary federal process is FERC's decision on an Environmental Impact Statement, which it issued on _____. DEQ submitted comments on the EIS on _____. I am checking with DEQ to uncover any additional federal deadlines for North Carolina.

Things get more complicated when it comes to state permits because there are numerous permits involved, not all of which are known yet because they may be triggered by circumstances that are not currently known. For example, the ACP would need a _____ permit if the project will _____. In addition, permit processes vary, involve different departments, and have different length clocks for the department's permit determination.

I am still working with DEQ to identify each permit needed (or potentially needed) and determine the bottom-line deadline for the state's decision. But here's what I know now:

Permit Type	Estimated deadline for permit decision	Notes
Water Quality: 401 certification (DEQ)	End of November	DEQ plans to request more information on the permit application and will have 60 day from receipt of the additional information to make a permit determination
Air quality permit (DEQ)	Mid November or mid-December, depending upon whether DEQ decides to allow 30 days for written comments.	DEQ will hold a hearing regarding the compressor station air quality permit on Oct 12. It is deciding whether to allow 30 days following the hearing for written comments. Once comment period ends, the hearing officer submits a report to DEQ air quality director with a recommendation. Likely take about 30 days for generation of that report and DEQ to make a decision.
Stormwater permits (DEQ)	Unknown because DEQ has not received applications yet. <<How long does DEQ have once it received the applications?>>	NPDES permits required for sections of the ACP in Nash and Cumberland counties.
Riparian buffer permit		

Erosion and Sediment Control Plans	September 27	DEQ received plan on August 28 and has 30 days to act.
Well permit for ground water withdrawal	??	??
Well Construction Permit		DEQ must review within 30 days of application
Natural Heritage / Protected Species Consultation (DNCR)		
Consultation under s. 106 of the National Historic Preservation Act (DNCR)		
Protected Species Consultation (Wildlife Resources Commission)		

North Carolina had opportunities to weigh-in at the federal level and will need to make permit determinations this fall.

Robeson	5
Cumberland	1
Sampson	5
Johnston	2
Wilson	0
Nash	4
Halifax	0
NH	0